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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
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Paper No. 12  
HWR

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re The Center for Clear Vision of Sinai Hospital

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Serial No. 75/401,760

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William M. Hanlon Jr. and Andrew R. Basile  
of Young, Basile, Hanlon, MacFarlane, Wood & Helmholtz,  
P.C. for applicant.

Caroline E. Wood, Trademark Examining Attorney, Law Office  
110 (Chris A.F. Pedersen, Managing Attorney).

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Before Simms, Cissel and Wendel, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

The Center for Clear Vision of Sinai Hospital has  
filed an application to register the mark CLEAR VISION for  
"ophthalmological and ophthalmic services specifically  
surgical services."<sup>1</sup>

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<sup>1</sup> Serial No. 75/401,760, filed December 8, 1997, claiming a first  
use date and a first use in commerce date of May 1992. A  
disclaimer has been made of the word VISION. The application has  
been filed as a concurrent use application, citing the owner of  
Serial No. 74/728,203 for the mark CLEARVISION for ophthalmology  
and ophthalmic services as an exception to applicant's exclusive  
right to use of its mark in commerce.

Registration has been finally refused under Section 2(d) of the Trademark Act on the ground of likelihood of confusion with the registered marks CLEAR VISION for "eyeglasses"<sup>2</sup> and KLEER VISION for "devices for cleaning eyeglasses, namely, sponges impregnated with a cleansing and polishing solution, sold with a holder therefor"<sup>3</sup> (these registrations presently being owned by the same entity) and with the registered mark BRINGING CLEAR VISION TO LIFE for "ophthalmological services."<sup>4</sup>

The final refusal has been appealed and both applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

We make our determination of likelihood of confusion on the basis of those of the *du Pont* factors<sup>5</sup> which are relevant under the circumstances at hand and for which evidence is of record. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000). Two key considerations in any analysis are the similarity or

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<sup>2</sup> Registration No. 1,564,209, issued November 7, 1989, Section 8 & 15 affidavits accepted and acknowledged, respectively. A disclaimer has been made of the word VISION.

<sup>3</sup> Registration No. 1,265,473, issued January 31, 1984, Section 8 & 15 affidavits accepted and acknowledged, respectively.

<sup>4</sup> Registration No. 1,514,942, issued November 29, 1988, Section 8 & 15 affidavits accepted and acknowledged, respectively.

<sup>5</sup> See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

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dissimilarity of the respective marks and the similarity or dissimilarity of the goods or services with which the marks are being used. See *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

Registration Nos. 1,564,209 and 1,265,473

Insofar as these two registered marks are concerned, the mark CLEAR VISION is identical to applicant's mark CLEAR VISION and the mark KLEER VISION is virtually identical thereto. The fact that KLEER VISION is the phonetic, rather than visual, equivalent of applicant's mark makes little difference in the overall commercial impressions created by the two marks. Applicant has even acknowledged that its mark CLEAR VISION is "virtually identical" to the marks CLEAR VISION and KLEER VISION.

The issue with respect to these marks lies in the similarity or dissimilarity of the goods with which registrant is using its marks and the services with which applicant uses its mark.

The Examining Attorney has taken the position that the eyeglasses and devices for cleaning the same are closely related to the ophthalmological services of applicant. As support for her argument that an association would be made by the average purchaser between these goods and services,

the Examining Attorney has made of record copies of several third-party registrations alleged to show that the same entities offer both ophthalmological services and eyeglasses under the same mark.

Applicant insists that the eyeglasses and related goods involved here are not being sold to the general consumer, but rather that registrant only sells its goods to dealers and suppliers of eyeglass stores. On this basis, applicant argues that not only are the goods and services not the same, but the channels of trade for the two are different.

In making this analysis of whether a relationship exists between the goods and services, we are guided by the standard that the greater the degree of similarity in the marks, the lesser the degree of similarity that is required between the goods or services on which the marks are being used to support a likelihood of confusion. If the marks are the same or almost the same, as is the case here, there need only be a viable relationship between the goods and services in order to support a holding of likelihood of confusion. See *In re Peebles Inc.*, 23 USPQ2d 1795 (TTAB 1992); *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

Although applicant argues that registrant's goods are sold only to dealers and suppliers, and not directly to the public, this argument is to no avail. There are no restrictions in the cited registrations as to channels of trade. Thus, registrant's eyeglasses and cleaning devices must be presumed to travel in all the normal channels of trade for these goods. See *Kangol Ltd. v. KangaROOS U.S.A.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992). We must assume the eyeglasses and cleaning devices would be available directly to the general public. Furthermore, even if sold by registrant to dealers or store suppliers, the general public would still be the ultimate purchasers of the goods and would encounter the marks being used thereon.

Moreover, we find the evidence supplied by the Examining Attorney adequate to show that eyeglasses may be obtained from the same source which provides ophthalmological services and may bear the same mark. While we are aware that applicant is providing surgical ophthalmological services under its mark, such as laser eye surgery, the ophthalmological services as identified in the third-party registrations encompass surgical services of

this nature.<sup>6</sup> Furthermore, as pointed out by the Examining Attorney, in the specimens of record, the statement is made that applicant is "a full-service eye care center not only for eye exams, contacts, glasses and RK Surgery, but the latest medical breakthrough for improving vision, Excimer Laser Surgery." Accordingly, we find this statement, taken in conjunction with the third-party registrations for the same mark for both ophthalmological services and eyeglasses, sufficient to establish that the general public, as purchasers of both the services and the goods, would be likely to assume a common source therefor. This is especially true when highly similar marks, such as are involved here, are used in connection therewith. See *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467 (TTAB 1988).

Thus, we find that a close relationship exists between the goods of registrant and the services of applicant, so as to result in likelihood of confusion when the marks CLEAR VISION (or KLEER VISION) are used in connection therewith.

The circumstances here are not similar to those in the cases cited by applicant in which distinctions were found

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<sup>6</sup> We note that we are referring to those third-party registrations that specifically include ophthalmological services, not those that cover only optometry or optician services, which are not necessarily rendered by a medical doctor.

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to exist either between the goods and services per se or between the channels of trade. In particular, we note that in *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993), there was no evidence that the ultimate purchasers of the registrant's leather goods would encounter the mark of the producer of the leather in bulk, in addition to the mark of the finished products. Here the evidence is sufficient to show that consumers might very well encounter eyeglasses bearing registrant's CLEAR VISION mark while availing themselves of applicant's CLEAR VISION ophthalmological services. We find confusion likely with the contemporaneous use of CLEAR VISION (and KLEER VISION) marks by registrant and applicant on the respective goods and services.

Registration No. 1,514,942

Here there is no question as to the similarity of the services of applicant and the registrant. Registrant's "ophthalmological services" fully encompass the specific ophthalmological surgical services of applicant.

Thus, the only issue is the degree of similarity or dissimilarity of the marks being used in connection with these services, namely between registrant's mark, BRINGING CLEAR VISION TO LIFE, and applicant's mark, CLEAR VISION.

The Examining Attorney argues that the phrase CLEAR VISION is the dominant portion of registrant's slogan mark and as such, the mark in its entirety creates a similar commercial impression to applicant's mark CLEAR VISION. Applicant, on the other hand, insists that registrant's mark evokes a completely different commercial impression, namely, that registrant's mark conveys the "idea" that something is brought to life, whereas applicant's does not.

We are fully aware that marks must be considered in their entireties when determining likelihood of confusion. Nonetheless, it is also well established that there is nothing improper, under certain circumstances, to give more or less weight to a particular portion of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). We find the term CLEAR VISION to be the dominant portion of registrant's mark, despite its presence in a slogan, rather than in a simple word mark. Both marks are being used with ophthalmological services and both convey the same promise or expected result: CLEAR VISION. While there are obvious differences in appearance and sound between the marks, we cannot agree that the commercial impressions created by the marks as a whole are dissimilar.

Furthermore, there is no additional element in applicant's mark which might serve to distinguish it from

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registrant's mark. The many cases cited by applicant deal with different marks used under different circumstances and cannot be likened to the present situation. We note particularly that infringement actions involve different factors, several of which are not relevant to proceedings before the Board, where the only issue is registrability.

Accordingly, we find confusion likely to result from the contemporaneous use by applicant of its CLEAR VISION mark and registrant of the mark BRINGING CLEAR VISION TO LIFE for ophthalmological services.

Copending Application Serial No. 74/728,203

Applicant has pointed to the existence of copending application 74/728,203 for CLEARVISION for similar services, owned by a different entity, which was published for opposition without citation of the registered marks involved here. This application is presently the subject of an opposition filed by applicant and, as a settlement of this opposition, has been referred to as an exception to applicant's exclusive use in the instant concurrent use application. Applicant contends the passage through examination of the copending application without citation of the present references should be considered as a factor in applicant's favor.

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As we have often stated, each case must be decided on its own merits. The allowance of another mark by another Examining Attorney, regardless of the similarity of the mark to applicant's mark, is not binding on the Board. We do not have the file history before us, and even if we did, we would not be required to permit the registration of yet another mark which we find likely to cause confusion with previously registered marks. See *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984) and the cases cited therein.

Decision: The refusal to register under Section 2(d) is affirmed.

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